

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/09/2002

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The Honourable Mr. Justice V.S. SIRPURKAR

W.P. No.14502 OF 1995

Selur Mines, rep. by its
Partner, T. Socratis
Salem Petitioner

-Vs-

1. The Government of Tamil Nadu
rep. by the Secretary to
Government, Environment and
Forest Department
Madras-9

2. The Principal Chief Conservator
of Forests, Madras-6

3. The District Forest Officer
Salem Division, Salem

4. The Secretary to Government
Industries Department
Government of Tamil Nadu
Madras-9 Respondents

Petition under Art.226 of the Constitution of India
for issue of a Writ of Certiorarified Mandamus
as stated in the petition

For Petitioner :: Mr. Muthu Geethaiyan

For Respondents :: Ms. Selvi George

:ORDER

Petitioner herein challenges a letter dated 20-4-1995, sent by
the Secretary to the Government, Environment and Forest Department to the
Principal Chief Conservator of Forests, Madras. In pursuance of this letter,
the Section Officer has re under:

"2. I am, therefore, to request you to issue necessary immediate

instructions to all District Forest Officers and Conservators of Forests to forward all the pending and future applications with basic reports relating to grant/renewal of mining lease on forest lands to the Government in Industries Department through the Principal Chief Conservator of Forests and Director of Geology and Mining along with the technical report obtained from the concerned Assistant Director/Assistant Geologist to enable the Industries Department to arrive at appropriate decision and thereafter to obtain prior approval of Central Government in terms of Section 2 of the Forest (Conservation) Act, 1980. A copy of the D.O. Letter cited is also enclosed for information and appropriate action."

According to the petitioner, he had applied for a mining licence vide his application dated 22-7-1992 for quarrying rough stone and multicolour stone over an extent of 9.93.1 hectares in Shelur Reserve Forest of Namakkal Range in Salem Division. He says that under Sec.2 of the Forest Conservation Act

where the land is covered by the forest, any non-forest activity would have to be initiated and continued only with the prior approval of the Central Government.

2. It seems that after he sent the application, certain details were asked from him, which is apparent from the plea raised by the respondents in their counter. It is pointed out in the counter even the area was inspected by the District Forest Officer on 3-8-1992 and the petitioner's application was forwarded to the Principal Chief Conservator of Forests vide Reference No.10110/92 dated 12-10-1992 and the Principal Chief Conservator of Forests had sent the said application to the Government. It is then pointed out in the counter that thereafter the Advisory Group which was constituted for examining the proposals for diversion of forest area for non-forest activities, held its meeting on 17-5-1993 and in that meeting the lease proposals were considered. The counter goes on to show that some particulars were sought from the petitioner which were required by the Advisory Group vide communication dated 2-8-1993 bearing Ref. No.10110/92. It is pointed out that thereafter the petitioner instead of sending these particulars has chosen to challenge the aforementioned communication dated 20-4-1995 by which the concerned officers were required to take immediate steps in respect of the lease proposals and then to send the matters to the Central Government for their prior approval before grant of the leases.

3. Learned counsel for the petitioner submits that it is not for the State Government to consider any of the proposals on its own as under Sec.2 of the Forest Conservation Act, prior approval of the Central Government is a must. Learned counsel in support of his contention, points out that even in the Apex Court ruling reported in 1997 SCC 267 (T.N. Godavarman Thirumulkpad v. Union of India and others) it becomes clear that any non-forest activity such as mining, etc. is totally banned and cannot be continued unless a prior approval by the Central Government is obtained. Learned counsel, therefore, urges that instead of the State Government wasting its time on asking for the various details from the petitioner, first the application should be sent to the Central Government for their prior approval and it is only then that the State Government would be in a position to decide upon the grant or refusal of

the lease. Learned counsel further says that because of the impugned communication, the State Government feels itself bound for collecting the various particulars from the persons like the petitioner and, therefore, that communication should be quashed and instead the State Government should be directed to straight away send the application to the Central Government.

4. Learned Government Advocate, however, points out that it is the sole choice of the State Government either to grant or not to grant the lease. She says it is only where the State Government decides to grant the lease and agrees principally the lease which it would decide on the basis of the particulars from the applicants that it would be required to send the whole application to the Central Government for getting its prior approval. Learned counsel points out that where on the basis of the particulars supplied by the applicants, the State Government comes to the conclusion that no lease can be granted at all even otherwise then there would be no question of sending those particulars and the application to the Central Government for obtaining its prior approval. She says that in this case, instead of furnishing the particulars which were sought from the petitioner, the petitioner was dilly-dallying with the matter and has now come up to challenge what in fact is an internal correspondence in between the two departments, which cannot be challenged.

5. Considering these rival submissions, it could be said that the petition has no merits. It is no doubt true that in the aforementioned judgment, the Supreme Court has observed that no non-forest activity can continue unless there is a prior approval of the Central Government. It can also not be disputed that the mining and quarrying operations were non-forest activities. It is also further not disputed that the said activity is to continue on in the forest land. Therefore, when the application is made for the lease to the State Government, it will be for the State Government to first know from all the relevant particulars whether the grant of lease is feasible or not. If ultimately the State Government decides that such lease could be granted then alone there would be a question of the prior approval of the Central Government and not otherwise. Otherwise, each and every application for mining/quarrying lease would have to be sent to the Central Government for their prior approval whether such applications deserve to be considered by the State Government for grant of lease or not. It must be said at the outset that grant of mining lease or quarrying lease is an exclusive domain of the State Government and not the Central Government. The Central Government would come in picture only where such mining or quarrying lease happens to be in respect of the land in forest area. It is only under such eventuality that the prior approval of the Central Government is required. If the State Government is of the opinion that the lease cannot even otherwise be granted and there could be hundred other reasons for such refusal, the State Government would be perfectly justified in not forwarding the application to the Central Government and rejecting it in limine. Here, the State Government has precisely done that by asking for the particulars from the petitioner. Instead of furnishing the particulars to the State Government, the petitioner herein has chosen to come in a writ petition to challenge the internal correspondence between two departments.

6. The writ petition has no merits. It must be dismissed.

It is accordingly dismissed but without any orders as to the costs. Connected W.M.P. No.23044 of 1995 is closed.

Index:Yes

Website:Yes

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